[Cite as *State v. Freeman*, 2010-Ohio-220.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO	C.A. No. 24799
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
ROBERT A. FREEMAN	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellant	CASE No. CR 08 09 3205

DECISION AND JOURNAL ENTRY

Dated: January 27, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellant, Robert Freeman, appeals from his convictions in the Summit County Court of Common Pleas. This Court affirms.

I

{¶2} On September 27, 2008, Akron police received a 911 call from Kimberly Cockrell following an altercation that occurred between her and Freeman at the apartment they shared on Kenmore Boulevard. She informed police that Freeman had hit, kicked, and strangled her; ripped her clothing off; sat on her chest while threatening to burn her with a marijuana "blunt"; and would not unlock the door to allow her to leave the apartment. Based on those events, Freeman was later indicted for the following offenses: kidnapping in violation of R.C. 2905.01(A)(2)/(3), a first-degree felony; domestic violence in violation of R.C. 2919.25(A), a fourth-degree felony; domestic violence in violation of R.C. 2919.25(C) a second-degree misdemeanor; and unlawful restraint in violation of R.C. 2905.03, a third-degree misdemeanor.

The State dismissed the kidnapping count at trial. A jury found Freeman guilty of the remaining offenses, and the trial court later sentenced Freeman to 18 months in prison, which was suspended on the condition that he complete two years of community control.

{¶3} Freeman timely appealed from his convictions and asserts one assignment of error for our review.

II

Assignment of Error

> "APPELLANT'S CONVICTIONS FOR DOMESTIC VIOLENCE WERE BASED UPON INSUFFICIENT EVIDENCE AS A MATTER OF LAW."

{¶4} In his sole assignment of error, Freeman argues that there was insufficient evidence that Cockrell was a "family or household member" which is a required element to support his domestic violence conviction.

{¶5} Whether the evidence adduced at trial is legally sufficient to support a conviction is a question of law. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. See, also, *State v. Moneypenny*, 9th Dist. No. 03CA0061, 2004-Ohio-4060, at ¶10. In doing so, this Court must:

> "[E]xamine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; see, also, *Thompkins*, 78 Ohio St.3d at 386; *Akron v. Garrett*, 9th Dist. No. 24412, 2009-Ohio-1522, at ¶8.

"In essence, sufficiency is a test of adequacy." *Thompkins*, 78 Ohio St.3d at 386.

{¶6} It is a violation of R.C. 2919.25(A) to "knowingly cause or attempt to cause physical harm to a family or household member." Similarly, it is a violation of R.C. 2919.25(C) to "knowingly cause a family or household member to believe that the offender will cause

imminent physical harm to the family or household member." The statute defines "family or household member" to include a person "who is residing or has resided with the offender" and is "[a] spouse, a person living as a spouse, or a former spouse of the offender." R.C. 2919.25(F)(1)(a)(i). R.C. 2919.25(F)(2) further defines that a "person living as a spouse" is "a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question." The Supreme Court has considered the term "cohabitation" as used in the domestic violence statutes as "aris[ing] out of the relationship of the parties rather than their exact living circumstances." *State v. Williams* (1997), 79 Ohio St.3d 459, paragraph one of the syllabus. It has further elaborated that "[t]he essential elements of 'cohabitation' are (1) sharing of familial or financial responsibilities and (2) consortium." Id. at paragraph two of the syllabus. Factors that establish the sharing of familial or financial responsibilities include "provisions for shelter, food, clothing, utilities, and/or commingled assets." Id. at 465. Factors that establish consortium include "mutual respect, fidelity, affection, society, cooperation, solace, comfort, aid of each other, friendship, and conjugal relations." Id.

{¶7} At trial, Cockrell testified that she had known Freeman for approximately two years and that they had lived together most of that time. Initially, she moved into his apartment on Bina Avenue where he resided throughout 2007 and into the spring of 2008. She testified that she moved all her clothes into the apartment, but that she did not have any furniture to bring, nor did she assist him in paying the rent. Cockrell stated they both contributed to the cooking and cleaning while living there, although Freeman cooked more than she did. Cockrell also received mail at the Bina Avenue address and remained there while Freeman was out of state for three

months while they were dating. According to Cockrell, the couple held themselves out to others as boyfriend and girlfriend and socialized as a couple with Freeman's family and his children. While they were living together, Freeman paid the rent and other bills because Cockrell was only working "off and on" throughout that time.

{¶8} Cockrell testified that when Freeman returned to Ohio after being gone for a few months, he and Cockrell moved to an apartment on Ira Street for a few weeks, then to the apartment on Kenmore Boulevard where they were residing together on the night of the altercation. She stated that the two were engaged in sexual relations throughout the entire time they resided together in various apartments and had engaged in "angry sex" on the night of the offense.

{¶9} Cockrell indicated she ate and slept at the Kenmore Boulevard apartment on a daily basis since she and Freeman had moved there in 2008, although she admitted that she still did not contribute to the rent. She further admitted that she did not have a key to the apartment because Freeman was only given one key when they moved in and he kept it with him at all times. As a result, Cockrell testified she could not come and go unless Freeman was there to open the door with his key, as the only door to the apartment had a lock which required the use of a key to both enter the apartment and exit it once inside. On the night in question, Freeman would not unlock the door for Cockrell to leave, despite her attempts to do so by kicking the door. Eventually, Freeman unlocked the door with his key and threw several of her belongings out of the apartment. Cockrell took her suitcase and several bags full of her belongings with her when she went to a nearby gas station to call 911.

{¶10} The State also presented testimony from the landlord of Freeman's Bina Avenue apartment. The landlord testified that she had seen Cockrell living at the apartment with

Freeman when she had stopped by the property during his occupancy in 2007 and into 2008. Additionally, Officer Shawn Chetto, the officer who responded to Cockrell's 911 call, testified without objection that upon his arrival at the gas station, Cockrell told him that she lived at the Kenmore Boulevard apartment with her boyfriend and that the two had just had an argument which had "gotten physical."

{¶11} Based on the foregoing testimony, the State adduced evidence, which if believed, demonstrated that Cockrell and Freeman were sharing familial responsibilities and were engaged in sexual relations which demonstrate the necessary elements to prove the two were cohabiting at the time of the offense. Id. Thus, we determine that there was sufficient evidence upon which a trier of fact could have found beyond a reasonable doubt that Cockrell was a "family or household member" as was required to support Freeman's domestic violence conviction. See, e.g., *State v. West*, 10th Dist. No. 06AP-114, 2006-Ohio-5095, at ¶14 (concluding that the victim's testimony that she had moved in with the defendant and that they were living together as boyfriend and girlfriend at the defendant's house constituted sufficient evidence that she was a "family member" for purposes of his domestic violence conviction). Accordingly, Freeman's argument is without merit and his sole assignment of error is overruled.

III

{¶12} Freeman's sole assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

CARR, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

NICHOLAS SWYRYDENKO, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.